**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**INCOME TAX APPLICATION NO.149 OF 1997**

Commissioner of Income Tax,
Nashik ...Applicant

V/s.

Ashok Sahakari Sakhar
Karkhana Ltd.
Ashoknagar, Tal.Shrirampur,
Dist.Ahmednagar ...Respondents.

Mr.Parag Vyas with A.S.Rao for the Applicant.
Mr.Pramod Vaidya for the Respondent.

**CORAM: S.RADHAKRISHNAN &**
**J.H.BHATIA, JJ.**
**DATE : 5th July, 2005.**

**ORAL JUDGMENT:** (Per J.H.Bhatia,J.)

1. In this Reference, the Revenue has raised the following questions of law for opinion of this Court.

> "Whether on the facts and in the circumstances of the case, the ITAT relying on the Special Bench of ITAT Pune's decision in the case of Shri Chhatrapati SSK Ltd. (198 ITR 78-AT), was right in deleting the following additions by holding that the various funds and deposits collected by the assessee society out of the sugarcane purchase price payable to the cane growers are not trading receipts of the assessee as held by the Supreme Court in the case of Bazpur Co-op.Sugar Mills Ltd. 172 ITR 321 and 177 ITR 469 ?"

1.Non refundable deposits Rs. 4,88,164/-
2.Interest on NRD Rs. 13,96,482/-

2. "Whether on the facts and in the circumstances of the case, the ITAT was right in law in holding that the order u/s 154 passed by the A.O. in view of the Supreme Court's decision in the case of Bazpur Co-op. Sugar Mills Ltd. 172 ITR 321 cannot be sustained though the same was passed before the ITAT, Special Bench, Pune's decision in the case of Shri Chhatrapati SSK Ltd. dated 16/1/1992 was received?"

3."Whether on the facts and in the circumstances of the case, the ITAT was right in holding that the issue involved was debatable inspite of Supreme Court's decision on the issue in the case of Bazpur Co-op.Sugar Mills Ltd. (172 ITR 321)?"

2. The question of Non-refundable deposits and interest on Non-refundable deposits is squarely covered by the judgment of the Supreme Court i**n Commissioner of Income Tax v. Shri Chhatrapati Sahakari Sakhar Karkhana Ltd. (2004) 270 Income Tax Reports 1** as also in the judgment of this Court in Income Tax Appeal No.9 of 1999. The Supreme Court has distinguished the rules obtained in Maharashtra and U.P. In view of these two authorities, it is clear that the deductions on account of Non-refundable deposits are not liable to be added in the income and

provisions for interest on Non-refundable Deposits is liable to be deducted from the income of the Society in view of the rules obtained in Maharashtra.

3. In the result, we answer the questions in affirmative, that is in favour of the Assessee and against the Revenue. Accordingly, the Reference is disposed of.

**(S.RADHAKRISHNAN,J.)**

**(J.H.BHATIA, J.)**